

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities for action pursuant to section 10B-11(e) of the Montgomery County Code on May 3, 2000, and the Commission voted that it was a matter within the Commission's jurisdiction. The case was scheduled for public hearing on June 28, 2000 and postponed to October 18, 2000 at the request of the Respondent with the consent of the Complainant.

Neither the Respondent nor any representative of Respondent appeared in the hearing room for the hearing. It has been reported, outside the record in this matter, that a member of Respondent's family went to the location of the Office of Common Ownership Communities instead of to the hearing room location which was clearly set forth on the summons and in previous correspondence establishing the date and time of the hearing. A county employee not associated with the Office of Common Ownership Communities met the member of Respondent's family. The county employee indicated that he did not know where the hearing was being held. The member of Respondent's family chose to leave.

The Panel heard testimony from the representative of the management company on behalf of the community in order to determine that the situation which had caused the complaint to be filed had not changed and that the record clearly reflected the complaint.

Findings of Fact

Ms Trish Marcario, an employee of The Management Group, manager for Decoverly I Homeowners Association since the beginning of this year, testified on behalf of the Association. She indicated that the Homeowner had built a fence on this property without having filed an application for approval with the Board of Directors as required by Article VII of the Declaration of Covenants, Conditions and Restrictions of Decoverly I Homeowners Association. This was the allegation set forth in the complaint filed by the community and sent to the Homeowner. In two written communications sent to the Office for Common Ownership Communities, the Homeowner has not denied this allegation.

Ms Marcario reported that the concerns that the community has with the fence constructed by this homeowner result from the fact that the fence does not conform with Section 11 ("Fences") of Article VII of the community Covenants, requiring that "[a]ny fence constructed upon The Property (sic) shall be substantially similar in design, dimension and material to the fences installed by Declarant,..." Ms Marcario explained that the original fences in the section of the community in which this Homeowner lives are constructed in cedar and have gates with a half-moon shape at the top of the gate. She testified that the fence constructed by this homeowner is not made of cedar and the gate does not have the same shape as the others in that area of the community. She also indicated that fence may have been constructed with poor materials or poorly constructed, is not straight and the gate does not hang properly. She testified that the Board of Directors would not have approved an application to construct this fence as it is constructed.

Ms Marcario stated additionally that the Association had filed complaints with the Commission on Common Ownership Communities against two other homeowners in this section who had applied for and been given approval to construct fences contingent on their using cedar wood to construct their fences. The fences have been constructed in some other wood. Ms Marcario said that, with newly elected members, the Board of Directors was considering a change in the interpretation of the Covenant on fences and might allow construction in wood other than cedar in this area. She said that the complaints had been withdrawn pending this reconsideration.

Ms Marcario is not in a position to offer expert testimony on what would have been required of this Homeowner had an application to build a fence been submitted and denied or approved contingent on conditions.

Discussion

The Covenants require that a homeowner submit an application to the Board or its designated committee prior to building a fence and assume that the appropriate community body will consider and respond to the application or the application will be deemed to have been approved. Even though the fence was constructed without this approval, it is premature to order that the fence be removed since there is insufficient information on the modifications that will be necessary to conform the fence to the action the community may take with regard to such application.

The Commission on Common Ownership Communities Panel cannot replace or reproduce the response of a community to an architectural application. The Commission can only review the decision of the community to determine whether it is reasonable and in accordance with the law.

Conclusions of Law

The Declaration of Covenants, Conditions and Restrictions of the Decoverly I Homeowners Association clearly requires that an application be submitted to the Board of Directors or a designated architectural control committee and approval be granted in writing or waived by inaction for 60 days after submission of a complete application prior to construction of a fence on a property within the community. The homeowner in this case has failed to submit such application and has built a fence. There has been credible testimony indicating that the Board of Directors would not have approved an application for the fence constructed by this homeowner as it has been constructed.

Order

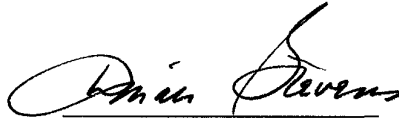
In view of the foregoing and based on the record, for the reasons set forth above, the Commission orders:

Mr. Ghasabehi must file an application to build his fence, including all of the information

required, with the Board of Directors of the Decoverly I Homeowners Association on or before the 30th day after the date of this decision.

The application of Decoverly I Homeowners Association for legal fees is denied.

The foregoing was concurred in by panel members Subin, Wertlieb and Stevens. Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland withing thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

A handwritten signature in cursive script, reading "Dinah Stevens".

Dinah Stevens, Panel Chairwoman
Commission on Common Ownership Communities